

LAW OFFICES  
**SIDEMAN & BANCROFT LLP**  
 ONE EMBARCADERO CENTER, 22<sup>ND</sup> FLOOR  
 SAN FRANCISCO, CALIFORNIA 94111-3711

1 RICHARD J. NELSON (State Bar No. 141658)  
 E-Mail: *rnelson@sideman.com*  
 2 IAN K. BOYD (State Bar No. 191434)  
 E-Mail: *iboyd@sideman.com*  
 3 ANNA P. CHANG (State Bar No. 301468)  
 E-Mail: *achang@sideman.com*  
 4 ANGELA M. HE (State Bar No. 319351)  
 E-Mail: *ahe@sideman.com*  
 5 SIDEMAN & BANCROFT LLP  
 6 One Embarcadero Center, Twenty-Second Floor  
 San Francisco, California 94111-3711  
 7 Telephone: (415) 392-1960  
 Facsimile: (415) 392-0827

8 Attorneys for Cisco Systems, Inc. and Cisco Technology, Inc.  
 9

10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12 **OAKLAND DIVISION**  
 13

14 CISCO SYSTEMS, INC., a California  
 corporation, et al.,

15 Plaintiffs,

16 v.

17 ZAHID “DONNY” HASSAN SHEIKH, an  
 18 individual, et al.,

19 Defendants.

20  
 21 ADVANCED DIGITAL SOLUTIONS  
 INTERNATIONAL, INC., a California  
 corporation,

22 Third-Party Plaintiff,

23 v.

24 RAHI SYSTEMS, INC., a California  
 25 corporation, et al.,

26 Third-Party Defendants.  
 27  
 28

Case No. 4:18-cv-07602 YGR

**PLAINTIFFS’ OPPOSITION TO  
 MOTION BY DEFENDANTS TO STAY  
 CIVIL PROCEEDINGS UNTIL  
 EXPIRATION OF STATUTE OF  
 LIMITATIONS**

Judge: Honorable Yvonne Gonzalez Rogers

Date: April 21, 2020

Time: 2:00 p.m.

Crtrm.: 1, 4th Floor

Defendants’ motion to stay proceedings, which is based on the premise that the defendants have a good faith apprehension that testifying truthfully in discovery might put them in the difficult position of testifying or asserting their Fifth Amendment rights, is untimely. Fact discovery involving witnesses for the defendants is now closed. There is, thus, no predicament that the defendants find themselves in that requires the significant step of a stay of the civil case. Accordingly, the Court should deny the motion as moot.

### **I. BRIEF FACTUAL BACKGROUND**

Plaintiffs Cisco Systems, Inc. and Cisco Technology, Inc. (collectively, “Cisco” or “Plaintiffs”) filed the Complaint in this action on December 18, 2018 (Docket No. 1), against Advanced Digital Solutions International, Inc. (“ADSI”), individuals related to that company, and companies controlled by them (“the ADSI Defendants”). The Complaint included a paragraph describing the active counterfeit operations occurring at ADSI’s headquarters in Fremont:

In December 2017, a former ADSI employee reported to Cisco that ADSI purchases unlabeled products from a company in China and imports the products into a P.O. Box in Reno, Nevada. The P.O. Box is associated with McIntosh Networks, which is run by Jessica Little, an ADSI employee. . . . On information and belief, Little transports the unlabeled modules to ADSI. Once ADSI receives the unlabeled products, it affixes labels bearing counterfeit Cisco Marks on the products and sells the counterfeit Cisco products to state and federal government entities through GSA contracts.

Docket No. 1, at ¶ 46.

Plaintiffs issued written discovery including requests for documents. ADSI and PureFutureTech (a company closely held by the same individuals who own and control ADSI) produced spreadsheets, emails, and purchase/sale documents. Neither ADSI nor PureFutureTech interposed an objection based on the Fifth Amendment. Declaration of Richard J. Nelson (“Nelson Decl.”), ¶ 2, filed herewith.

On July 10, 2019, Cisco was scheduled to take the deposition of Jessica Little, the person identified in the Complaint as being involved in placing counterfeit Cisco labels on products. The deposition was to start at 10 a.m. At 9:30 a.m., counsel for ADSI and then-counsel for Ms. Little informed Cisco counsel that the deposition would not occur, based on things that ADSI counsel

1 learned that morning from Ms. Little. On July 19, 2019, counsel for ADSI informed counsel for  
 2 Cisco that Ms. Little retained separate counsel. *Id.*, ¶ 3.

3 On September 10, 2019, Cisco deposed Shahid Sheikh, the owner and former CEO of  
 4 ADSI. Mr. Sheikh answered questions and did not once assert the Fifth Amendment. *Id.*, ¶ 4.

5 On October 11, 2019, Cisco deposed Jessica Little. Ms. Little refused to answer any  
 6 substantive question, and instead asserted her Fifth Amendment rights. *Id.*, ¶ 5.

7 On December 16, 2019, Cisco deposed Theresa Lau, a former ADSI employee, who  
 8 testified that Kamran Sheikh arranged for her to obtain a UPS box in Portland, Oregon, to receive  
 9 shipments, even though she was unaware of any ADSI employee or customer in Portland. *Id.*, ¶ 6,  
 10 Ex. A (90:19-91:5; 101:5-103:9). This testimony was very similar to what was alleged in the  
 11 Complaint about the Reno UPS Box.

12 Another former employee of ADSI, Nabia Uddin, candidly testified on March 6, 2020, that  
 13 ADSI set up the UPS box in Reno, Nevada, as a way to import Cisco products from China,  
 14 including unlabeled products that were then sent to ADSI's facility in Fremont, where she  
 15 observed Defendants Jessica Little and Imran Hussain placing Cisco labels upon them. *Id.*, ¶ 7,  
 16 Ex. B (134:2-20; 218:19-222:25)

17 Depositions of the remaining ADSI-related witnesses occurred in February 2020, but the  
 18 witnesses refused to answer substantive questions based on assertion of their Fifth Amendment  
 19 rights, including: Kamran Sheikh on February 20, 2020; Farhaad Sheikh on February 21, 2020;  
 20 and Shahid Sheikh (resumed) on February 28, 2020. Fact discovery cutoff was March 20, 2020  
 21 (Docket No. 106).<sup>1</sup> There will be no further discovery from the Defendants. *Id.*, ¶ 8.

## 22 II. LEGAL DISCUSSION

23 The Constitution does not require a stay of civil proceedings pending the outcome of  
 24 criminal proceedings. *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995)

---

25  
 26 <sup>1</sup> Cisco requested leave to conduct certain third party discovery after the March 20 cutoff (Docket  
 27 113). That motion is still under submission. None of the third party discovery involves the ADSI  
 28 Defendants or implicates their Fifth Amendment rights.

(emphasis added). Absent substantial prejudice to the rights of the parties involved, simultaneous parallel civil and criminal proceedings are unobjectionable under Ninth Circuit jurisprudence. *Id.* A stay of a civil case is an “extraordinary” remedy for extraordinary circumstances. *Sterling Nat. Bank v. A-1 Hotels Int’l, Inc.*, 175 F. Supp. 2d 573, 577 (S.D.N.Y. 2001). The decision whether to stay civil proceedings in the face of a parallel criminal proceeding should be made “in light of the particular circumstances and competing interests involved in the case”. *Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989).

The Ninth Circuit established a five factor test to consider the appropriateness of granting a stay based on the possible assertion of the defendant’s Fifth Amendment rights:

- (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay;
- (2) the burden which any particular aspect of the proceedings may impose on defendants;
- (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources;
- (4) the interests of persons not parties to the civil litigation; and
- (5) the interest of the public in the pending civil and criminal litigation.

*Keating*, 45 F.3d 322 at 325.

### III. ARGUMENT

#### A. At this Stage of this Case, the Implication on Defendants’ Fifth Amendment Rights is Negligible.

##### 1. Fact discovery cutoff has already passed.

The ADSI Defendants request this stay primarily to avoid prejudice they may face in asserting their Fifth Amendment rights to discovery. But discovery of the ADSI Defendants is already over. Therefore, Defendants’ motion should be denied as moot, since the grounds for the request are no longer genuine.<sup>2</sup>

<sup>2</sup> The ADSI Defendants assert that the first time they recognized there could be criminal (footnote continued)

1 The purpose of a stay, in the context of simultaneous parallel civil and criminal  
 2 proceedings, is to prevent plaintiffs from “us[ing] the rules of civil discovery in the [civil] suit to  
 3 gain an improper advantage in the criminal matter, prying into the prosecution’s case in a manner  
 4 not otherwise permitted”. *Booth v. Spjute*, No. 1:07-CV-00609AWIGSA, 2008 WL 5046050, at  
 5 \*4 (E.D. Cal. Nov. 24, 2008). As such, courts make a distinction between certain types of  
 6 discovery requests, noting that “answers and document discovery present little danger of self-  
 7 incrimination,” whereas “interrogatory and deposition discovery poses a substantial risk of self-  
 8 incrimination.” *Walsh Secs., Inc. v. Cristo Prop. Mgmt., Ltd.*, 7 F.Supp.2d 523, 527 (D.N.J.1998).

9 But when there is no additional discovery needed to resolve the merits of the case, courts  
 10 have held that there is **no** danger of self-incrimination. *See Int’l Bus. Machines Corp. v. Brown*,  
 11 857 F. Supp. 1384, 1390 (C.D. Cal. 1994) (finding that certain individual defendants had already  
 12 testified at deposition and therefore had no remaining Fifth Amendment privilege to assert, and  
 13 thus concluding that where a defendant had already given partial deposition testimony on  
 14 substantive issues of the case, the Fifth Amendment privilege is “negligible” and cannot provide  
 15 the basis for a stay); *see also Edwards Family Partnership, LP v. Dickson*, No. 3:13-CV-587-  
 16 CWR-LRA), 2014 WL 4494269, at \*4 (S.D. Miss., Sept. 10, 2014) (finding that the “most  
 17 important” factor in denying defendant’s stay was that “there [wa]s no additional discovery  
 18 needed to resolve the merits of th[e] case and therefore no danger of self-incrimination present”).

19 Rather, courts tend to grant stays when fact discovery is forthcoming. *Rasheed v.*  
 20 *Purlantov*, No. C-06-0422 JCS, 2007 WL 1520954, at \*2 (N.D. Cal. May 23, 2007) (granting in  
 21 part, and denying in part, defendant’s motion to stay the action, by staying discovery for ninety

22 \_\_\_\_\_  
 23 implications to the conduct asserted in the Complaint, was when Cisco confirmed with a  
 24 government end customer that ADSI had sold counterfeit Cisco products to them. Motion at 6:6-9  
 25 (Docket No. 108). But the time to recognize the potential issue of sales of counterfeit products to  
 26 the federal government was at the outset of the case. Cisco did not hide this important fact. It is  
 27 stated unambiguously in paragraph 46 of the Complaint: “Once ADSI receives the unlabeled  
 28 products, it affixes labels bearing counterfeit Cisco Marks on the products and sells the counterfeit  
Cisco products to state and federal government entities through GSA contracts.” (Docket No. 1)  
 (emphasis added).

1 days with respect to depositions, interrogatories, and requests for admissions directed at  
 2 defendant, but permitting all other discovery, and the action in general, to proceed) (emphasis  
 3 added).

4 Here, there will be no other opportunity for Cisco to seek to compel discovery information  
 5 from the ADSI Defendants. Thus, Defendants’ citations to various cases that stand for the basic  
 6 principle that a court should consider a stay of proceedings when a defendant faces discovery and  
 7 has to make difficult choices regarding how to respond, are irrelevant. The ADSI Defendants face  
 8 no such uncomfortable decision. Fact discovery is over.

9 2. Defendants have not been indicted.

10 Pre-indictment motions to stay are generally denied, as recognized even by the cases cited  
 11 in Defendants’ motion. *See, e.g., Chao v. Fleming*, 498 F.Supp.2d 1034, 1037 (W.D. Mich 2007)  
 12 (“In general, courts recognize that the case for a stay is strongest where the defendant has already  
 13 been indicted, whereas pre-indictment requests for a stay are usually denied.”); *Molinaro*, 889  
 14 F.2d at 903 (“The case for staying civil proceedings is ‘a far weaker one’ when ‘[n]o indictment  
 15 has been returned[, and] no Fifth Amendment privilege is threatened.’”); *eBay, Inc. v. Digital*  
 16 *Point Solutions, Inc.* No. C 08-4052 JF (PVT), 2010 WL 702463, at \*3 (N.D. Cal. Feb. 25, 2010)  
 17 (denying defendants’ motion to stay, and noting that “[t]he potential prejudice to a civil defendant  
 18 facing a parallel criminal investigation is ‘more remote’ than it is for an indicted defendant, and  
 19 the delay to the plaintiff is ‘potentially indefinite’”); *United States v. Private Sanitation Indus.*  
 20 *Ass’n of Nassau/Suffolk, Inc.*, 811 F.Supp. 802, 805 (E.D.N.Y.1992) (finding that “[a]s a  
 21 preliminary matter, since [the defendant] ha[d] yet to be indicted by any grand jury, his motion to  
 22 stay may be denied on that ground alone”); *Sterling*, 175 F. Supp. 2d at 577 (expressing concern  
 23 that “[t]here is no telling how complicated the government’s investigation may be, whether the  
 24 allegations of the particular civil plaintiff are merely the tip of an iceberg that will result in a  
 25 lengthy and open-ended investigation, what priority the government assigns to the investigation,  
 26 whether it will result in charges that will have to be litigated, or how time-consuming the resulting  
 27 criminal case will be”).

1 In *General Elec. Co. v. Liang*, No. CV 13-08670 DDP VBKX, 2014 WL 1089264, at \*3  
 2 (C.D. Cal. Mar. 19, 2014), the court denied defendants’ motion to stay the civil action pending  
 3 resolution of a criminal investigation, because the basis for staying the civil action was  
 4 “significantly diminished by the fact that [the defendant] had not been charged with any crime.”  
 5 While the court acknowledged that “a stay should not be categorically denied solely because the  
 6 defendant has not been indicted,” the court did not have before it “any indicia that an indictment is  
 7 imminent or other facts that have generally been present where courts have granted stays pending  
 8 the resolution of criminal proceedings.” *Id.*; *see, e.g., Chao*, 498 F.Supp.2d at 1040 (stay granted  
 9 where the government advised the court that it had sufficient evidence to seek an indictment,  
 10 “suggest[ing] that an indictment is not far off”); *Taylor, Bean & Whitaker Mortgage Corp. v.*  
 11 *Triduanum Fin., Inc.*, No. CIV. 2:09–cv–0954 FCD EFB, 2009 WL 2136986 at \* 3 (E.D.Cal. July  
 12 15, 2009) (stay granted where two of three defendants in the civil action had already been indicted  
 13 for their alleged participation a fraud scheme in which plaintiffs alleged that the third defendant  
 14 was also involved).

15 The ADSI Defendants cite to several cases in their motion for the proposition that courts  
 16 have granted requests to stay civil proceedings even when the movant had not yet been indicted.  
 17 However, these cases can be distinguished on the bases that discovery was forthcoming, or there  
 18 was clear indication that an indictment was imminent. For example, the ADSI Defendants cite the  
 19 case of *Estate of Limon v. City of Oxnard*, 2013 WL 12131359, at \*4 (C.D. Cal. Dec. 10, 2013) as  
 20 “staying several aspects of civil proceeding even though an indictment had not been issued,” but  
 21 neglected to note that the stay applied to depositions of certain police officers and that the court  
 22 denied a requested six-month stay of all proceedings. Additionally, Defendants cite to *Federal*  
 23 *Insurance Co. v. Tabb*, 1991 WL 113204 (N.D. Ill. Jun. 7, 1991) to support the proposition that a  
 24 stay can be ordered in the absence of an indictment; but, importantly, the court noted that  
 25 indictment was not “mere surmise,” since an affidavit from defendant’s counsel indicated that  
 26 defendant had been served with a grand jury subpoena; an Assistant United States Attorney had  
 27 informed him that defendant was a “target” of a grand jury investigation; and that the prosecutor  
 28 expected an indictment naming the defendant in due course. *Id.* at \*1.



**B. The five *Keating* factors weigh heavily towards denying Defendants’ motion.**

1. *Cisco’s Interest and Defendants’ Burden (First and Second Keating Factors)*

Cisco has a substantial interest in moving this case forward. A trial date has already been set in this case for November 2, 2020. Furthermore, Cisco has an interest in fully recovering its losses from the ADSI Defendants. A stay lengthens the time that a defendant’s remaining assets may be spent. *Applied Materials, Inc. v. Semiconductor Spares, Inc.*, No. C95-20129RMW(EAI), 1995 WL 261451, at \*2 (N.D. Cal. Apr. 26, 1995) (denying defendants’ motion to stay proceedings, with consideration of plaintiffs’ concern that delay would cause defendants to “use their remaining assets to pay for counsel to defend the current civil and future criminal actions, thereby reducing plaintiffs’ chances of recovering any money”); *State Farm Mut. Auto. Ins. Co. v. Beckham-Easley*, No. CIV.A. 01-5530, 2002 WL 31111766, at \*3 (E.D. Pa. Sept. 18, 2002) (“The threat of the dissipation of assets during a stay has been recognized as a substantial burden for plaintiffs”). This concern is compounded when there is no criminal action actually pending. *eBay*, 2010 WL 702463, at \*5.

Furthermore, any burden on the ADSI Defendants does not outweigh Cisco’s interest in proceeding expeditiously in this litigation. Fact discovery of Defendants is already over, rendering any Fifth Amendment concern moot. Defendants can invoke the Fifth Amendment, and already have. It is disingenuous for Defendants to now argue that they will be prejudiced by exercising the privilege which they have repeatedly invoked in the past. *United States v. Private Sanitation Indus. Ass’n of Nassau/Suffolk, Inc.*, 811 F. Supp. 802, 807 (E.D.N.Y. 1992). Therefore, Cisco’s interest in preventing unnecessary delay and seeking monetary judgment in the instant action outweighs Defendants’ speculative burden. The fact that Defendants have not even been indicted strengthens Cisco’s argument that indefinite delay will harm its financial interests, and that Defendants may use the same funds they allegedly obtained by fraud to support their defense. *eBay*, 2010 WL 702463, at \*6. Defendants’ “[p]otentially criminal conduct should not serve as a shield against a civil law suit and prevent plaintiff from expeditiously advancing its claim.” *Id.*



2. *The Interests of the Court, Third Parties, and the Public (Third, Fourth, and Fifth Keating Factors)*

The Court has an interest in the convenient and efficient administration of this case. *Applied Materials*, 1995 WL 261451, at \*4. This case is over 15 months old. It is unrealistic, and burdensome, to postpone indefinitely the pending action until criminal charges are brought or the statute of limitations has run for all crimes conceivably committed by Defendants. *Sterling*, 175 F. Supp. 2d 573 at 580. Such a postponement would require this Court either to “rely upon fortuitous events to manage its docket,” or to “guess what criminal act [the ADSI Defendants] might be charged with, and, consequently, which limitation periods apply to those criminal acts.” *Id.*

Furthermore, the public has an interest in proceeding with this case. Intellectual property theft, fraud, and white collar crime directly affect the public by stifling innovation and competitive market channels. *See Molinaro*, 889 F.2d 899 at 93 (affirming the district court’s denial of defendant’s motion for a stay and findings that defendant continued to attempt to dispose of his assets; the action had been pending for a year, and the court had an interest in clearing its docket; and the interests of nonparties, i.e., depositors, and the public, who would be frustrated by further delay).

///

///

///

///

///

///

///

///

///

///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**20**

**21**

**22**

**23**

**24**

**25**

**26**

**27**

**28**

21  
22  
23  
24  
25  
26  
27  
28

22  
23  
24  
25  
26  
27  
28

23  
24  
25  
26  
27  
28

24

25

26

27

28

**25**

**26**

**27**

**28**

**26**

**27**

**28**

**27**

**28**

28